United Nations **AT**

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 928

Case No. 1015: ABDULHADI ET AL.

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Suheil Ahmed Abdulhadi, Mohammed Deeb Salameh and Bassem Mahmoud Khader, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997 and 28 February 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 10 April 1998, the Applicants filed an application requesting the Tribunal to order:

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> [That they be provided with] minutes of conversation taken on the subject between the FOD and the ... Applicant [Abdulhadi].

...

i. [Rescission of the] decisions [terminating them].

ii. [Reinstatement of the] Applicants to duty effective the date of their suspension, and considering the period of their cessation, as a special leave with full pay plus due interest.

iii. [That] should Respondent refrain from reinstating Applicants, [they should be compensated] for their due salaries until judgement has been ordered, plus a compensation for the severe injury caused to Applicants, to be paid in US dollars at the rate available to UN [staff] at the time of their separation.

iv. Payment of retirement benefits due by virtue of long years of service reaching 32 years, and attaining age of retirement, which were denied to ... Applicant [Salameh] because of his termination for misconduct.

v. Payment of counseling fees and secretarial expenses estimated at US$ 1,800."

Whereas the Respondent filed his answer on 30 September 1998;

Whereas the Applicant filed written observations on 7 March 1999;

Whereas the facts in the case are as follows:

The Applicant Abdulhadi entered the service of UNRWA on 20 September 1973, on a temporary indefinite appointment as an Area staff member, as Teacher "B" Mathematics at Falouja School, Damascus Area in the Syrian Arab Republic (SAR). Effective 25 July 1985, he was transferred from the post of School Supervisor (Mathematics), Damascus Area, to the post of Area Officer, South (AO(S)), grade 13. Effective 1 August 1986, he was promoted to the full grade of his post (grade 14).

The Applicant Salameh entered the service of UNRWA on 1 September 1964, on a temporary indefinite appointment as an Area staff member, as Clerk "D" in the Damascus Area Office, SAR. On 28 May 1994, he was advised that his post of Area Registration and Distribution Officer had been reclassified to Registration Clerk (RC), grade 07. The Applicant would, however, retain his existing grade (08).

The Applicant Khader entered the service of UNRWA on 19 June 1985, on a temporary indefinite appointment as an Area staff member, as Area Food Supervisor "C" in the South Area, SAR. On 1 January 1991, he was transferred to the post of Welfare Worker at the Area Office, South, grade 06, without any change in grade or salary. In 1992, the post of Welfare Worker (grade 07) was reclassified to Social Worker (grade 09). Effective 1 July 1994, the Applicant was promoted to grade 07.

On 25 April 1995, following reports of irregularities in the Special Hardship Programme in Dera'a and a substantial shortage of flour after a distribution of rations in that city, the Director of UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to examine the procedures for according Special Hardship Status (SHS) to Palestine refugees in Dera'a and the procedures of UNRWA's distribution system.

On 21 May 1995, after hearing 70 hours of testimony the BOI submitted a detailed report to the Director of UNRWA Affairs. The BOI concentrated its efforts on ascertaining who was responsible for the shortage in commodities at Dera'a and whether the shortage was in any way linked to the procedures for distributing SHS to refugees. The BOI discovered that there was a link between the two matters, principally because of the disorder in procedures and the lack of internal controls leading up to granting of SHS and the notification thereof to the beneficiaries, as well as the lack of supervision in this process.

The BOI noted a number of irregularities: some beneficiaries were not notified until months later that they had been granted SHS; Special Hardship Cases (SHC) rolls contained the names of some 400 refugees whose dates of birth were in the 19th century and very early in the 20th century, implying that deceased beneficiaries were kept on the rolls so their rations could be sold off for personal gain; failure to update the distribution lists by computer which allowed for substantial theft of rations to occur; and, failure by the responsible staff (in particular, the RC and the Area Relief and Social Services Officer (ARSSO)), to register all new SHC and distribute the proper ration cards which allowed for distribution of rations to

individuals not entitled to them. In addition, the BOI noted that close personal relationships between Field Office staff and certain staff at the South Area allowed improprieties to go unnoticed.

The BOI was of the opinion that carelessness in following basic office procedures, the non-observance of Agency rules and regulations, and a total lack of supervision of staff both from the Field Office and particularly from the AO(S)), created a perfect climate of confusion which allowed abuse of the distribution system. It permitted wholesale fraud through staff taking rations for personal gain and converting them to cash by selling them to merchants and giving and/or selling them to other staff. Also, the BOI found that the reporting lines in the Department of Relief and Social Services (especially between the ARSSO and the Field Eligibility and Registration Officer, the Field Welfare Officer, the RC and others) were very blurred.

In general, the overall picture of the South Area, as viewed by the BOI, was one of rampant and pervasive dishonesty and deviousness that reached across the entire spectrum of staff. A fair characterization of the staff would be to put them into two categories: those who participated in the dishonesty and those who were aware of it. The BOI ascertained that this was how the Agency's operations were perceived by the refugees.

With respect to the Applicant Abdulhadi (the AO(S)), the BOI concluded in paragraph 4.2.5 of the report that he was "guilty of gross negligence (his lack of knowledge over activities within his Area would indicate that he only acted as a 'mailbox' between the Field Office and the staff of the Area Office) in carrying out his responsibilities, as well as malfeasance for either participating in the misconduct or knowingly allowing it to continue in his Area."

With respect to the Applicant Salameh (the RC), the BOI concluded in paragraph 4.1.1 of the report as follows: "Long the king pin of distribution in the South Area, the RC

continued to effect the distribution of commodities for SHC after the reorganization of the Relief and Social Services Department. Thereafter even when distribution was turned over to [the] Supply Department ... he continued to be involved in distribution with the assent and approval of the AO(S) ..." The BOI further added in paragraph 4.1.4 of its report that "[i]t was clear to the BOI beyond a reasonable doubt that by manipulating distribution, the lists of SHC, and other control systems, the RC was siphoning-off commodities in the South Area for a very long time ..." Additionally the BOI mentioned in paragraph 4.1.5 of its report that there were indications that the RC had been demanding "bribe money" from the refugees.

Regarding the Applicant Khader (Social Worker), the BOI stated in paragraph 4.5.1 that he "is the brother of the largest merchant in Dera'a dealing in SHC ration purchasing/ selling (and he was the only person allowed to attend the distributions, presumably to facilitate the exchange of rations/ration cards to the merchant) ..." The BOI also inferred "that his particular conduct was very improper and [found that] he actively participated in the misconduct in the South Area. ..."

On 24 May 1995, the Officer-in-Charge (OIC), UNRWA Affairs, SAR, informed the Applicants Abdulhadi and Khader, by separate letters, that they were each suspended from duty without pay effective that day pursuant to Area staff rule 110.2 pending the outcome of further investigation into the charges against them. On the same day, the OIC advised the Applicant Salameh (who had been placed on suspension with pay effective 30 April 1995) by another letter that, based on the investigations to date, it had been decided to convert his suspension from duty with pay to suspension from duty without pay effective that date pending further investigation.

The Applicant Abdulhadi

On 13 June 1995, the Field Administration Officer (FAO), SAR, who was also

Chairman of the BOI, advised the Director of Administration and Human Resources, of further evidence against the Applicant Abdulhadi causing the BOI to believe "categorically that the AO(S) received a bribe in exchange for an appointment as well as selling an Agency shelter". The FAO therefore recommended that the termination of the Applicant Abdulhadi "be for misconduct rather [than] in the interest of the Agency."

On 17 June 1995, the FAO informed the Senior Officer of Administration and Human Resources that "[g]iven the mores of the culture within which we work ... it would be reckless on the part of the BOI to divulge the name of [the person who had accused the Applicant Abdulhadi of receiving bribes] ..." The FAO added "[m]oreover, either the allegation of bribe receiving or that of selling an Agency installation is each in its own right sufficient to establish grounds of termination for misconduct under staff rule 10.2, at the very least."

By letter dated 19 June 1995, the Director of UNRWA Affairs advised the Applicant Abdulhadi that effective close of business that day, his appointment was terminated for misconduct under Area staff regulation 10.2 and Area staff rule 110.1. The reasons given by the Director of UNRWA Affairs were the afore-mentioned findings of the BOI regarding receipt of bribes and selling an Agency installation, as well as the Applicant's having allowed the irregularities relating to the SHC programme in the South Area to continue and his negligence in carrying out his responsibilities as AO(S).

On 1 July 1995, the Applicant Abdulhadi wrote to the Director of UNRWA Affairs requesting reversal of the decision to terminate him, alleging that the decision was flawed in several respects. On 27 July 1995, the OIC advised the Applicant Abdulhadi that he had again reviewed the decision to terminate him and saw no reason to change the decision.

On 13 August 1995, the Applicant Abdulhadi lodged an appeal with the Joint Appeals Board (JAB).

On 19 January 1997, the JAB transmitted it report to the Commissioner-General. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

20. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:

A. The Board noted that the Administration's decision to terminate the Appellant's appointment for misconduct was based on the fact that the Appellant was involved in the Special Hardship Cases irregularities including the distribution of rations.

B. The Board also noted that the Appellant admitted to the Board of Inquiry that he knew that the deceased persons were still carried on the Special Hardship Cases rolls. He also admitted that he knew the Registration Clerk had 'Losses' at the end of each distribution.

C. The Board took note of the Appellant's admission that he had been receiving rations several times from the registration clerk, which he said [he] gave to a poor neighbour.

D. Moreover, the Board noted that the Appellant was completely aware of the conversion of Agency rations by the Registration Clerk.

E. Based on the above, the Board believes that the Administration's line of action in dealing with this case runs in conformity with the Agency's moral and ethical integrity.

F. However, the Board found no evidence relating to the two allegations of bribe and selling an Agency installation and accordingly dismisses both allegations.

IV. RECOMMENDATION

21. In view of the above and without any prejudice to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed."

On 10 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Abdulhadi and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that, except for the findings as to the bribe and the 'sale' of a shelter (for which the Board found no evidence), the Board of Inquiry's findings were soundly based and justified the disciplinary action taken against you. The Board recommended that your appeal be dismissed.

I disagree with the Board's finding that there was no evidence before the Board of Inquiry that you asked for and received a bribe and that you 'sold' a shelter. Evidence to that effect was given to the Board of Inquiry. However, I agree with the balance of the Board's conclusions and its recommendation and I accordingly dismiss your appeal."

The Applicant Salameh

By letter dated 12 June 1995, the Director of UNWRA Affairs advised the Applicant Salameh that effective close of business on 24 May 1995, he had decided to terminate the Applicant's appointment for misconduct under Area staff regulation 10.2 and Area staff rule 110.1. The reasons given by the Director of UNRWA Affairs were the findings of the BOI, which noted that the Applicant Salameh had participated in the conversion of Agency SHC rations for personal use as well as his having manipulated the SHC lists and ration cards. The Director of UNRWA Affairs also cited the Applicant's attempt to cover up the loss of commodities in the March 1995 distribution. He stated that the Applicant's conduct was incompatible with the status of an UNRWA staff member.

On 22 June 1995, the Applicant Salameh wrote to the Director of UNRWA Affairs citing alleged flaws in the composition of the BOI and its proceedings and requesting that the decision to terminate his appointment be reversed. On 19 July 1995, the BOI issued a supplement to its report, detailing indications that the Applicant Salameh had visited SHC after his suspension "apparently with a view towards subverting the BOI's search for the facts". The OIC advised the Applicant Salameh, on 24 July 1995, that he had reviewed the decision to terminate him and saw no reason to change it. On 29 July 1995, the Applicant Salameh lodged an appeal with the JAB against his termination for misconduct.

Subsequently on 7 August 1995, the OIC advised the Applicant Salameh that as a result of newly discovered evidence of, amongst other things, the Applicant's attempt to cover up previous misconduct after his suspension, it had been decided to revoke his termination for misconduct under Area staff regulation 10.2 and summarily dismiss him under Area staff regulation 10.3, effective close of business 24 May 1995. On 9 August 1995, the Applicant Salameh wrote to the Commissioner-General requesting an independent review of his case. The OIC advised the Applicant, on 24 September 1995, that he had reviewed the circumstances of the case and saw no reason to change the decision to summarily dismiss the Applicant.

The JAB transmitted its report to the Commissioner-General on 19 January 1997. Its evaluation, judgement and recommendation read, in part, as follows:

"**EVALUATION AND JUDGEMENT**

21. In its deliberations, the Board examined all documents before it, including the Appellant's personal file, and came out with the following:

> A. The Board noted that the Administration's decision to terminate the Appellant's appointment, on grounds of misconduct, was utterly based on the fact that the Appellant was involved in a scheme which allowed for the misappropriation of Agency commodities destined for Special Hardship Cases.
>
> B. As a result, the Appellant was informed that an investigation of this charge was being made and based on the outcome of this investigation the Appellant was suspended from duty without pay.
>
> C. In the Director of UNRWA Affairs' ... letter ... dated 12 June 1995, the following findings by the Board of Inquiry, were given as the basis for Director of UNWRA Affairs' decision to 'terminate [the Appellant's] appointment with the Agency for misconduct under the staff regulation No. 10.2 and Area staff rule No. 110.1 effective COB [close of business] on 24 May 1995':

1. Having actively participated in the conversion of the Agency Special Hardship Case rations for personal use; and

2. Manipulated the list of Special Hardship Case and ration cards;

3. Attempted to cover up the loss of commodities on the March 95 distribution.

D. The Board is convinced that the Appellant remained, de facto, involved in the distribution of commodities after May 1994 despite the fact that he had formally no further responsibility for the distribution consequently the reclassification of his post. The Appellant admitted to have attempted to conceal the shortages of commodities listed in the report of the Board of Inquiry clearly because a substantial shortage existed before the distribution in March 1995 took place, and the Appellant was responsible for this loss.

E. The Board also is convinced by the available documents that the Appellant controlled the distribution of Special Hardship Case ration cards and in some cases manipulated this procedure by e.g. delaying the handover of cards to recipients or maintaining names of dead persons on the distribution list.

F. In the light of the above, the Board finds the disciplinary sanction imposed (i.e. termination for misconduct under staff regulation No. 10.2 and Area staff rule No. 110.1) appropriate and corresponding to the findings and the evidence thereof.

22. The Board noted that the report of Board of Inquiry was dated 21 May 1995, whereas the supplement to the Board of Inquiry's report was dated 19 July 1995. However, the Board failed to find any document indicating an official request to re-open the investigation after the report's submission neither by the same Board of Inquiry nor by a new one. In this connection the Board draws attention to the Director of UNRWA Affairs, SAR, Strictly Confidential letter ... of 1 June 1995 in which a new Board of Inquiry was formed to investigate the case of the Central Area.

...

IV. RECOMMENDATION

28. In view of the foregoing and without any prejudice to any party, the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the

administrative decision of termination for misconduct under staff rule 110.1.

However, in view of the fact that the investigation did not establish sufficient evidence for summary dismissal and due to lack of authority for extending the investigation beyond 21 May 1995, the Board recommends that this decision of summary dismissal be cancelled."

On 11 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Salameh and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the Board of Inquiry's initial findings of fact were supported by evidence and that the termination of your services for misconduct was appropriate. In relation to the substitution of summary dismissal for termination for misconduct, the JAB took the view that once the Board of Inquiry had submitted its report, without further instructions from the Field Director, there was no legal basis upon which it could continue investigations. Further, the JAB questioned the credibility of the further evidence against you, some of which was given by a man who is apparently psychotic. Accordingly, it recommended that the decision to change the basis of the termination of your services to summary dismissal be reversed.

I agree with the Board's conclusions regarding the decision to terminate your appointment for misconduct. In relation to the decision to change the basis of the termination of your services, I do not agree that the Board of Inquiry cannot make findings on further evidence presented to it after it has submitted its report. Indeed, it would be inappropriate for the Board of Inquiry to ignore evidence of any staff member's wrongdoing. However, in relation to the sufficiency of the further evidence, I am prepared to accept the JAB's views and accordingly I accept the Board's recommendation and allow your appeal insofar as it relates to the decision to change the termination of your services from misconduct to summary dismissal, but otherwise dismiss your appeal. You will be contacted by the Field Administration in relation to the implementation of my decision."

The Applicant Khader

In a "Note for the Record" dated 25 May 1995 by the Secretary of the BOI, allegations were recorded that the Applicant Khader had attempted to remove a file

concerning the Cash Assistance Programme after he was suspended from duty in May 1995. Additionally it was alleged by another Social Worker, that after the said suspension the Applicant had visited her and asked her to give certain evidence in his favour that he had not been present at the last distribution. On 20 June 1995, the Director of UNRWA Affairs advised the Applicant Khader that based on the findings of the BOI, which noted that the Applicant had facilitated transfers of SHC and their rations to merchants in his family, as well as the Applicant's attempts to interfere with the investigations, his appointment was being terminated in the interest of the Agency, under Area staff regulation 9.1 and Area staff rule 109.1, effective close of business that day.

On 11 July 1995, the Applicant Khader requested the Director of UNRWA Affairs to reverse the decision to terminate him, alleging that the charges against him were "imprecise and not correct". The OIC responded to the Applicant's letter on 8 August 1995, stating that he had reviewed the administrative decision concerned and saw no reason to change it.

On 15 August 1995, the Applicant Khader lodged an appeal with the JAB. The JAB transmitted its report to the Commissioner-General on 16 January 1997. Its evaluation, judgement and recommendation read as follows:

> "**III. EVALUATION AND JUDGEMENT**
>
> 18. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:
>
> A. The Board noted the sworn statement of Social Worker ... in which he tried to influence her, in order to testify that he was not present at the Distribution Centre at a given date. However, there is no evidence incriminating him of conducting transactions during his presence at the Distribution Centre.
>
> B. As for the Appellant's attempt to take the Cash Assistance Programme file along with the personal belongings from his office, there is no mention whether this particular file was examined and incriminating evidence found therein.

C. Based on the above, the Board could not find sufficient evidence against the Appellant

IV. RECOMMENDATION

19. In view of the foregoing, and without prejudice to any party, the Board unanimously makes its recommendation that the Administration's decision appealed against, be reversed."

On 20 March 1997, the Commissioner-General transmitted a copy of the JAB report to the Applicant Khader and informed him, inter alia, as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board appeared to note that you had lied to the Board of Inquiry about being present at the Special Hardship Case Distribution in Dera'a in March 1995, attempted to suborn a witness and had attempted to take official documents away from the Agency after your suspension. However, the Board stated that there was no evidence that you had conducted any improper transactions at the subject distribution or that the documents which you attempted to take away were themselves evidence of any wrongdoing on your part. Accordingly, the Board recommended that your appeal be upheld and that the administrative decision to terminate your appointment in the interest of the Agency be reversed.

While I agree that there is no strong evidence that you were guilty of misconduct at the Special Hardship Case distribution, you did lie to the Board about your presence there, you did attempt to suborn a witness and attempted to take official Agency documents away from [your] office after your suspension from duty. These acts, connected with the Board of Inquiry's investigations, justify the administrative decision taken. Therefore, I do not accept the Board's conclusions and recommendation and I accordingly dismiss your appeal.

...."

On 10 April 1998, the Applicants filed with the Tribunal the application referred to earlier.

Whereas the Applicant Abdulhadi's principal contentions are:

1. He was not negligent in carrying out his responsibilities as AO(S) and consequently the decision to terminate his appointment is arbitrary.

2. He was denied due process when the BOI refused to identify a witness who had made allegations against him. It is not unfair to conclude that the charges were wholly fabricated and that the BOI was an integral part of it. Therefore, the findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice and influenced by extraneous factors.

Whereas the Applicant Salameh's principal contentions are:

1. He did not actively participate in the conversion of SHC rations for personal use, or manipulate the list of SHC or tamper with ration cards in an attempt to cover up the loss of commodities at the March 1995 distribution. Therefore the decision to terminate his appointment was arbitrary.

2. The proceedings of the BOI were flawed in that it never confronted him with two out of the three allegations that were made against him and that consequently the findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice and extraneous factors.

Whereas the Applicant Khader's principal contentions are:

1. He never attempted to interfere with the BOI's investigation nor did he lie to it. He did not engage in any misconduct and consequently his termination was arbitrary.

2. The findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice and the influence of extraneous factors.

Whereas the Respondent's principal contentions are:

1. The decision to terminate each appointment was a proper exercise of discretion by the Respondent based on the findings of the BOI.

2. None of the three Applicants has provided any evidence to prove that the findings of the BOI and the Respondent's decision to terminate him were based on bias, prejudice or other extraneous factors.

The Tribunal, having deliberated from 8 to 30 July 1999, now pronounces the following judgement:

I. The Applicants Abdulhadi, Salameh and Khader have filed a joint application. Because the three Applicants' cases arise from related facts and raise similar issues, the Tribunal orders joinder of the cases.

Suheil Ahmed Abdulhadi

II. The Tribunal is satisfied that there was sufficient evidence before the BOI with respect to the Applicant Abdulhadi, to justify its findings that he had failed in his duties as AO(S). In its report dated 21 May 1995 to the Director of UNRWA Affairs, SAR, the BOI found that the Applicant Abdulhadi was aware of many irregularities in the Special Hardship Programme, such as dead people being listed on the Special Hardship Rolls, the RC (the Applicant Salameh) giving away rations to refugees who were not registered as SHC and receiving rations from the RC himself and from merchants holding ration cards. And yet, despite having the duty to monitor and administer the Agency's programmes in the South Area, the Applicant Abdulhadi took no action to stop such irregularities. The BOI also concluded that the Applicant Abdulhadi was aware of the conversion of rations by the Applicant Salameh and was grossly negligent in the performance of his duties.

III. The Tribunal wishes to express its concerns and record its observations concerning two matters which arise from the investigations conducted by the BOI and in the

Respondent's consideration of the BOI's reports. The first relates to the manner in which the BOI dealt with the allegation that the Applicant Abdulhadi had received a bribe in exchange for an appointment with UNRWA. The BOI decided not to inform the Applicant either as to the identity of the person who had made this allegation or of any specific detail thereof, because of the complainant's employment position vis-à-vis the Applicant and because it feared possible retribution against such person. It considered there was a general culture of retribution prevailing. The Applicant Abdulhadi was merely asked if he had ever received a bribe in exchange for an appointment and his denial was noted. The Chairman in his letter of 17 June 1995 to the Senior Officer, Administration and Human Resources, UNOV, stated that "[i]t would have added very little, if anything, to the question, if it included the name of the accuser and the post". The Tribunal takes issue with the Chairman's position and finds that the dearth of information provided to the Applicant regarding this allegation denied him due process. For instance, had he known the identity of his accuser he might have been able to establish that his accuser was far from impartial, honest or credible, or that his accuser might have had a motive for fabricating a false allegation against him. Had the Applicant been given details of the allegation he might have been able to establish that he had no role or influence in the appointment in question or might have been able to satisfy the BOI that he was not present on the occasions when it is alleged that the bribe was solicited or paid. These are just a few grounds of defence that might or might not have been available to the Applicant. There might have been others. We will never know. Suffice it to say that the Tribunal is satisfied that the Applicant Abdulhadi was not afforded due process in relation to this allegation. The BOI ought not to have found that this allegation had been established and the Respondent ought not to have taken it into account when he decided to terminate the Applicant Abdulhadi's appointment for misconduct.

The second observation of the Tribunal from the same letter of the Chairman of the BOI of 17 June 1995, causes the Tribunal even greater concern. The Chairman wrote: "Moreover, either the allegation of bribe receiving or that of selling an Agency installation is

each in its own right sufficient to establish grounds of termination for misconduct under staff rule 10.2 at the very least." The Tribunal finds this to be an alarming proposition. The Tribunal appreciates that the letter of 17 June 1995 must be considered in the context of the Chairman's earlier letter of 13 June 1995 to the Director of UNRWA Affairs, in which he had stated that insofar as those allegations were concerned the BOI had found the evidence of his accusers credible whereas they found that the evidence of the Applicant Abdulhadi was not. However, that proposition displays a profound lack of appreciation of or a misunderstanding of due process. An allegation cannot by itself be grounds for termination for misconduct, no matter how serious it may be.

The Tribunal is of the opinion that neither the manner in which the bribery allegation was addressed by the BOI nor the manner in which the bribery and the sale of the installation were commented on by the Chairman of the BOI in his said letter nor his suggestion that those very allegations would justify dismissal for misconduct, should have been taken into account by the Commissioner-General when determining how to act in the matter. The JAB had concluded that the findings of the BOI as set out in its original report were well-founded and observed, quite correctly in the view of the Tribunal, that many of the acts and omissions found by the BOI to constitute negligence or misconduct on his part, had in fact been admitted by the Applicant Abdulhadi.

However, the JAB also concluded that there was "no evidence relating to the two allegations of bribe and selling an Agency installation" and it had accordingly dismissed both allegations. The Tribunal believes that it was likely in the circumstances that the JAB, in relation to those allegations, had intended to convey that there had been no receivable or admissible evidence and that no due process had been afforded the Applicant Abdulhadi. However, the Respondent interpreted the words literally and apparently suspected that the JAB had omitted to read the papers concerning the evidence which had been given. Accordingly, the Respondent rejected the JAB's conclusion on this point and took those findings into account when deciding to terminate the Applicant Abdulhadi's appointment for

misconduct.

IV. The Tribunal considered that these BOI findings should not have been taken into account for the reasons stated. Nonetheless, it agrees with the JAB that there was ample evidence to justify its findings under other headings of misconduct. Thus, the Tribunal does not find it appropriate to disturb the Respondent' decision to terminate the Applicant Abdulhadi's appointment for misconduct. It is to be noted in this context that the JAB had recommended upholding that decision of the Administration and dismissal of Applicant Abdulhadi's appeal, notwithstanding that it had dismissed the charges relating to bribery and the sale of the shelter. The Applicant Abdulhadi had occupied a senior position in the Agency, which relied upon his integrity and judgement. The Tribunal rejects his bizarre and untenable defence that he had no duty either to prevent irregularities and misappropriation or to report them. The Tribunal finds that the Respondent's approach to the evaluation of the JAB was misconceived. It also finds that his reliance on the findings of the BOI which had demonstrated a lack of appreciation as to what constituted "due process" and which had stated that the very existence of an allegation could justify termination was misconceived. The Tribunal holds that the decision to terminate the Applicant Abdulhadi's appointment for misconduct nevertheless was wholly justified and would have been made even if the bribery allegation and the sale of the installation allegation had not been taken into account. His conduct, as described in findings which are not impugned, clearly justified the decision to summarily terminate his appointment.

V. Otherwise, the Tribunal is satisfied that the Applicant Abdulhadi was afforded due process and that the findings adverse to him were properly made on cogent evidence which the BOI was entitled to accept. The Tribunal rejects the Applicant Abdulhadi's assertions of *"Cruel extraneous factors, and sheer prejudice"* on the part of the Respondent and other like unsubstantiated allegations on the grounds that there is no evidence to support any of them.

Once again (as in case No. 1001, Al-Ansari, and other cases arising out of the investigations of the same BOI), the Tribunal rejects allegations of the existence of unproven sinister and malevolent forces *"outside politico-professional boards", "nepotism"* and the like on the grounds that they are similarly unsupported by evidence. The Tribunal repeats that it acts on evidence, facts found from evidence and inferences drawn from properly established facts. It will not act on bald allegations that do not assume the status of facts. The information presented does not add credibility by repetition.

Mohammed Deeb Salameh

VI. The Applicant Salameh was formerly the RC, Area Office, South Area. Prior to May 1994, as Area Registration and Distribution Officer, the Applicant Salameh was responsible for the distribution of rations to refugees; however, such responsibility was excluded from his post after May 1994. The Applicant Salameh maintains that he continued to distribute rations because the Distribution Team Leader (DTL) to whom his duties had been assigned was inexperienced, and that the AO(S) requested that the Applicant Salameh continue with this work as an Assistant to the DTL. Thus, after May 1994, the Applicant Salameh remained in a position of considerable trust regarding the proper distribution of food rations destined for SHC.

VII. The Tribunal is satisfied that the finding of the BOI that he abused that position for personal gain was based on cogent evidence that the BOI was entitled to accept. Likewise, the finding of the BOI that the Applicant Salameh not only assisted the DTL but, in fact, continued to run the distribution itself, including the distribution of March 1995, also was based on cogent evidence that the BOI was entitled to accept. The Tribunal finds no grounds for disturbing those findings.

VIII. Having reviewed the Report of the BOI, the Director of UNRWA Affairs, by letter of 12 June 1995, advised the Applicant Salameh of the decision to terminate his appointment with the Agency for misconduct under Area staff regulation 10.2 and Area staff rule 110.1 effective close of business on 24 May 1995.

Subsequently, further evidence resulted in the mode of the Applicant Salameh's termination being changed to summary dismissal. However, the Commissioner-General accepted a JAB conclusion regarding the weight of that additional evidence and restored the basis of the Applicant Salameh's termination from "summary dismissal" back to "termination for misconduct". In the circumstances the Tribunal does not consider it appropriate or necessary to address the complaints made on behalf of the Applicant Salameh in relation to those subsequent findings as no adverse consequence to the Applicant Salameh has resulted therefrom.

IX. The original findings of the BOI adverse to the Applicant Salameh established a pattern of misconduct on a significant scale. The Tribunal accepts that those findings were made on cogent evidence and that the Applicant Salameh was afforded due process in relation to the conduct of the investigations by the BOI. The Tribunal will not interfere with those findings. Whilst the Tribunal accepts the Applicant Salameh's argument that the BOI never put to him the allegation that he had misappropriated rations *"for his personal use"*, the gravamen of the finding was that he had misappropriated the rations. It matters not whether it was for his personal use or otherwise. The Tribunal will not set aside that finding.

X. The Respondent conceded that the allegation that the Applicant Salameh had manipulated the list of SHC and ration cards, although supported by other evidence, had not been put to him by the BOI. Accordingly, the Respondent no longer relies on that finding as a basis for the Applicant Salameh's misconduct. The Tribunal is, however, satisfied that the BOI's other findings of misconduct by the Applicant Salameh, which were in turn accepted by

the JAB, were supported by cogent evidence and that there was no unfairness of procedures in the BOI's investigations which led to those other findings. The Tribunal is satisfied that those findings justified the disciplinary action which was taken against him.

XI. As to the other allegations of want of process, unfair procedures, bias or prejudice made by the Applicant Salameh, the Tribunal is satisfied that there is no cogent evidence to support any of them. The claims based on such allegations are rejected. The JAB was of the opinion that the BOI's initial findings of fact concerning the Applicant Salameh were supported by evidence and that the termination of his services for misconduct was appropriate. However, the JAB concluded that the BOI had no power to continue its investigations once it had submitted its initial report. It also expressed doubts as to the credibility of the evidence against the Applicant Salameh in relation to the new or additional allegations. Accordingly, it recommended that the decision which was "summary dismissal" be reversed once again to "dismissal for misconduct".

The Respondent accepted the JAB's findings in relation to termination of the Applicant Salameh's appointment "for misconduct" rather than "summary dismissal". He disagreed, however, with the JAB's reasoning regarding the entitlement of the BOI to continue its investigations. The Tribunal is satisfied that the Respondent was correct in that view. The BOI was entitled to continue its investigations and to submit a supplemental report.

XII. Accordingly, the Tribunal is satisfied that the decision to dismiss the Applicant Salameh from the Agency for misconduct was a proper exercise of the Respondent's authority in accordance with the relevant staff regulation (10.2) and rule (110.1) and that it was not tainted by any bias, extraneous matters or prejudice.

Bassem Mahmoud Khader

XIII. The BOI found that the Applicant Khader actively participated in misconduct in the South Area. It found that the Applicant Khader's brother was the largest merchant in Dera'a purchasing and selling SHC rations, and that the Applicant Khader was the only Social Worker allowed to attend the distributions, presumably to facilitate the exchange of ration cards and rations to him. The BOI found that the Applicant Khader had actively participated in or facilitated the transfer of rations to his brother's business. After the BOI submitted its initial report to the Director of UNRWA Affairs, the Applicant Khader requested and was granted another opportunity to appear before the BOI. At that time, the Applicant denied any improper conduct. The BOI then put to him two allegations concerning his conduct after he had been suspended from duty on 24 May 1995. First, that he had attempted to remove a file from his office. Second, that he had approached another Social Worker to ask her to give certain evidence in his favour.

The BOI rejected the Applicant Khader's denials of those allegations as not credible. After the BOI issued a report in relation to those allegations, the Respondent wrote to the Applicant Khader by letter of 20 June 1995 stating, in part, as follows:

> "On 1 June you appeared before the Board of Inquiry, Dera'a, at your own request. This was your third appearance before the Board. During these proceedings you have given testimony on a number of items including your role in the March 1995 distribution to Special Hardship Cases in the South Area, as well as your denial in the involvement of attempting to take official documents out of the Agency premises after you were suspended. There is ample testimony that you were the only Social Worker in Dera'a allowed to attend and participate in the March 1995 Distribution in Dera'a and as such facilitated transfers of Special Hardship Cases and their rations to merchants in your family. In addition you denied the fact that you made contact with another Agency staff member after suspension with a view towards attempting to oblige her to testify that you were not present at the March 1995 Distribution in Dera'a. We have a written Note For the Record and a sworn statement concerning the facts of your attempts to leave the office premises with official documents relating to financial assistance for refugees and a statement from the staff member regarding contact with that person after your suspension.

> In the light of the above and the fact that the Board of Inquiry did not accept your testimony as credible (and in particular this includes your statements that you are not aware of the market value of each ration, while your brother and father are the largest merchants dealing in UNRWA Special Hardship Case rations in Dera'a) but rather believed the testimony and statements of the other witnesses, you are hereby informed that your appointment is terminated in the interest of the Agency under staff regulation No. 9.1 and Area staff rule No. 109.1 effective close of business on 20 June 1995.
>
> ..."

XIV. On 11 July 1995, the Applicant Khader wrote to the Respondent and sought reversal of the decision to terminate his services. On 8 August 1995, the OIC advised the Applicant Khader that he had reviewed the decision and saw no reason why it should be changed. On 15 August 1995, the Applicant Khader appealed to the JAB. The JAB considered evidence concerning the Applicant's presence at the ration distribution in March 1995 and his alleged subsequent actions to conceal his presence there. The JAB concluded that there was no proof that the Applicant Khader had been involved in the misappropriation of rations and recommended that the administrative decision to terminate his services in the interests of the Agency should be reversed.

In response to the report of the JAB, the Respondent agreed that whilst there was no strong evidence that the Applicant Khader had engaged in improper conduct at the March 1995 distribution, he had lied about his presence at that distribution, had attempted to suborn a witness, and had attempted to take away official documents after his suspension. He expressed the opinion that those acts, connected with the BOI's investigation, justified the decision taken and accordingly he did not accept the recommendation of the JAB.

XV. As the Tribunal has previously stated (see, e.g., Judgements No. 117, Van der Valk (1968) and No. 682, Dabit (1994)), Area staff regulation 9.1 gives the Respondent wide discretion, but his power must be exercised without improper motivation or abuse. The Tribunal has held on many occasions that an Applicant has the burden of proving that an

administrative decision is tainted by prejudice or improper motive and that to discharge that burden he must produce convincing evidence. Thus the Tribunal will not disturb a decision by the Respondent such as the one presented here, unless the Applicant provides convincing evidence that such decision was substantively or procedurally defective or motivated by some improper motive.

XVI. The Tribunal is satisfied that the BOI's findings that the Applicant Khader was an active participant in misconduct, based on his presence at ration distributions attended by his brother, who was the largest merchant involved in selling and buying rations, were justifiable and reasonable and should not be disturbed. Nor will the Tribunal disturb the BOI's reasonable findings that the Applicant had lied to it when he denied being present at the distribution, attempting to suborn a witness and attempting to take a file from his office after he had been suspended from duty. The JAB appears to have accepted that the Applicant Khader had indeed performed these acts but had merely disagreed with the conclusion drawn by the BOI that he was an active participant in the misappropriation of rations.

XVII. The Respondent disagreed with the JAB's ultimate conclusion. Regardless of whether the Applicant Khader's behaviour can be categorized as being associated with the misappropriation of rations, each of the acts which were accepted by the JAB, individually justified the administrative decision to terminate the Applicant Khader's services in the interests of the Agency. The Tribunal is satisfied that that decision was one which the Respondent was entitled to make.

The Tribunal is further satisfied that the Respondent's decision must stand. There is no evidence of any substantive or procedural defect or improper motive. The decision was a proper exercise of the Respondent's managerial discretion.

XVIII. For the foregoing reasons, the application of the Applicants Abdulhadi, Salameh and Khader is rejected in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Kevin HAUGH
Member

Chittharanjan Felix AMERASINGHE
Member

Geneva, 30 July 1999

Maritza STRUYVENBERG
Executive Secretary